IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL BALTES,	:	**No. 3:04cv2372**
Plaintiff,	:	
	:	**(Judge Munley)**
v.	:	
	:	
ARROWHEAD LAKE	:	
COMMUNITY ASSOCIATION, INC.	:	
and FRANK DeGRAND,	:	
Defendants	:	

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MEMORANDUM

Presently before the Court for disposition are Defendants Arrowhead Lake Community Association, Inc.'s and Frank DeGrand's motions for summary judgment on Plaintiff Michael Baltes' claims pursuant to 42 U.S.C. § 1983. The defendants argue that they were acting purely in a private capacity and did not act under color of law. These matters have been briefed fully and are ripe for disposition. For the following reasons, we will grant the motions and dismiss this case.

I. Background[1]

On October 30, 2002, Baltes drove through Defendant Arrowhead's residential development. Arrowhead's security personnel pursued him with lights and sirens activated, and continued the chase outside the development. During the chase, Baltes' pursuers contacted DeGrand, Arrowhead's Chief of Security, and he ordered them to continue pursuit.

[1] The following background facts are not disputed for the purposes of summary judgment.

DeGrand joined the chase and fired his gun at Baltes' vehicle several times. DeGrand and his subordinates apprehended Baltes, threw him from his car, and kicked, punched, and handcuffed him. Baltes further alleges that an unidentified Arrowhead security guard pointed a gun at his head.

Baltes filed a federal action under 42 U.S.C. § 1983, wherein he alleges the defendants, acting under color of state law, deprived him of his civil rights. He also filed several pendent state law claims.

II. Jurisdiction

Since a federal question is before the Court for constitutional violations pursuant to 42 U.S.C. § 1983, this court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1331.

III. Standard

Granting summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See Knabe v. Boury, 114 F.3d 407, 410 n.4 (3d Cir. 1997) (citing FED. R. CIV. P. 56(c)). "[T]his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original).

In considering a motion for summary judgment, the court must examine the facts in

the light most favorable to the party opposing the motion. International Raw Materials, Ltd. v. Stauffer Chemical Co., 898 F.2d 946, 949 (3d Cir. 1990). The burden is on the moving party to demonstrate that the evidence is such that a reasonable jury could not return a verdict for the non-moving party. Anderson, 477 U.S. at 248 (1986). A fact is material when it might affect the outcome of the suit under the governing law. Id. Where the non-moving party will bear the burden of proof at trial, the party moving for summary judgment may meet its burden by showing that the evidentiary materials of record, if reduced to admissible evidence, would be insufficient to carry the non-movant's burden of proof at trial. Celotex v. Catrett, 477 U.S. 317, 322 (1986). Once the moving party satisfies its burden, the burden shifts to the nonmoving party, who must go beyond its pleadings, and designate specific facts by the use of affidavits, depositions, admissions, or answers to interrogatories showing that there is a genuine issue for trial. Id. at 324.

IV. Discussion

In pertinent part, 42 U.S.C. § 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress . . . .

42 U.S.C. § 1983.

Thus, to establish a claim under section 1983, two criteria must be met. First, the

conduct complained of must have been committed by a person acting under color of state law. Second, the conduct must deprive the complainant of rights secured under the Constitution or federal law. Sameric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 590 (3d Cir. 1998).

A plaintiff must meet two elements to establish the defendants acted under color of state law. First, he must demonstrate the alleged constitutional deprivation resulted from either: a) an exercise of a right or privilege having its source in state authority; or b) a rule of conduct imposed by the state or a person for whom the state is responsible. Lugar v. Edmonson Oil Co., 457 U.S. 922, 937 (1982). Second, he must establish the defendants "could be described in all fairness" as state actors. Brown v. Philip Morris Inc., 250 F.3d 789, 801 (3d Cir. 2001) (quoting Edmonson v. Leesville Concrete Co., 500 U.S. 614, 620 (1991)).

Regarding the first element, Baltes argues that his constitutional deprivation was the result of the defendants' exercise of privileges provided by Pennsylvania's Uniform Planned Community Act ("UPCA"). He argues that the UPCA granted Arrowhead the authority to promulgate rules and collect dues, see 68 PA. CONS. STAT. ANN. § 5101-5303, and without this authority, Arrowhead's security would have no rules to enforce and Arrowhead would have no funds with which to pay the security force.

We find the connection between the UPCA and the alleged unconstitutional activity insufficient to meet the first Lugar element. The UPCA did not grant Arrowhead security the

authority to arrest, discharge weapons, use sirens or police lights, issue badges, or engage in any of the other activity that Baltes alleges constituted a violation of his rights. A tenuous indirect connection is insufficient to establish state action.

> A private action is not converted into one under color of state law merely by some tenuous connection to state action. The issue is not whether the state was involved in some way in the relevant events, but whether the action taken can be fairly attributed to the state itself. . . . As the Supreme Court has stated: 'we ask whether the State provided a mantle of authority that enhanced the power of the harm-causing individual actor.'

Groman v. Township of Malapan, 47 F.3d 628, 638-39 (3d Cir. 1995) (citations omitted).

Therefore, to satisfy the state actor requirement, state authority must have a more direct connection to the alleged constitutional violation. For example, in Henderson v. Fisher, the plaintiff alleged that the University of Pittsburgh campus police were state actors when they arrested him. 631 F.2d 1115, 1118 (3d Cir. 1980). The court agreed because the University of Pittsburgh was a state affiliated institution. Id. at 1118. The University of Pittsburgh-Commonwealth act stated, "[t]herefore, it is . . . the purpose of this Act to extend Commonwealth opportunities for higher education by establishing University of Pittsburgh as an instrumentality of the Commonwealth to serve as a State-related institution in the Commonwealth system of higher education." Id. at 1118 (emphasis added). Additionally, a Pennsylvania statute specially granted state university police with the same powers as local municipal authority. Id. (citing 71 PA. STAT. ANN. § 646). In contrast, Arrowhead is not a state affiliated institution, and Baltes has identified no statute delegating municipal police authority to Arrowhead. Rather, Arrowhead's attenuated association with the state is

comparable to different relationship addressed in Henderson, one the court found insufficient to satisfy the state actor requirement in 1983. In addition to suing the campus police officers who arrested him, the Henderson plaintiff advanced section 1983 claims against his criminal defense attorney, claiming that the attorney was a state actor because he was state licensed and an officer of the court. Id. at 1119. The court rejected this assertion, stating, "[p]articipation in a highly regulated profession does not convert a lawyer's every action into an act of the State or an act under color of state law." Id. (citing Jackson v. Metropolitan Edison Co., 419 U.S. 345, 355 (1974)).

Thus, it is not enough that the alleged constitutional violator was heavily regulated or licenced by the state. Rather, the inquiry is whether the alleged violations can be ascribed to any governmental decision. Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 177 (1972). In Moose Lodge, the plaintiff alleged that a private lodge discriminated against him in violation of the constitution by refusing to serve him alcohol, and the lodge's activities were under color of law because the state granted the lodge its liquor license. Id. The Court found this connection insufficient to classify the discrimination as state action, reasoning "the Pennsylvania Liquor Control Board plays absolutely no part in establishing or enforcing the membership or guest policies of the clubs that it licenses to serve liquor." Id. at 175.

Similarly, the UPCA played no role in authorizing or encouraging the defendants'

allegedly unconsitutional activity.[2] Arrowhead's security force and Frank DeGrand were, in all respects, private security. Although they allegedly acted in a manner similar to a municipally affiliated police force, the state in no way authorized or encouraged this behavior. Private action, no matter how "invidious or wrongful," is not unconstitutional. Id. at 172 (citing Shelly v. Kraemer, 334 U.S. 1, 13 (1948)). Therefore, we will grant the motions for summary judgment and dismiss Baltes' 42 U.S.C. § 1983 claims because he failed to establish that the defendants acted under color of law. As we will dismiss Baltes's federal claims in their entirety, we will dismiss the pendent state law claims for lack of jurisdiction. See United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966). An appropriate order follows.

[2] Baltes's argument that the defendants were state actors because a state statute authorized them to raise money and create regulations creates would, in effect, obliterate the distinction between private corporate action and public action. By statute, incorporated entities in Pennsylvania can promulgate bylaws and raise money through the sale of shares. See 15 PA. CONS. STAT. ANN. §§ 1504, 1521,1523. Under Plaintiff's reasoning, every corporate expenditure of funds raised by the sale of shares, or every corporate action to enforce bylaws, would be an exercise of a privilege with its source in state authority.

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Defendants	**:**	

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ORDER

AND NOW, to wit, this 15th day of May 2005, Defendant Arrowhead's motion for Summary Judgment (Doc. 32) and Defendant Frank DeGrand's Motion for Summary Judgment (Doc. 40) are hereby **GRANTED**. The Clerk of Court is hereby directed to enter judgment on behalf of the defendants and close this case.

BY THE COURT:

s/ James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court